

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MYKROLIS CORPORATION,

Plaintiff,

v.

PALL CORPORATION,

Defendant.

Civil Action No. 04-CV-10887 GAO

MOTION TO DISMISS THE COMPLAINT

Defendant Mykrolis Corporation ("Mykrolis") respectfully moves to dismiss the Complaint of Plaintiff Pall Corporation ("Pall").

This declaratory judgment action (the "Second Action") involves the same parties, patents and products as a previously filed action also before this Court, captioned Mykrolis Corp. v. Pall Corp., Civil Action No. 03 CV 10392 GAO (the "First Action"). As in the Counterclaim filed by Pall in the First Action, Pall seeks in this action a declaration that Mykrolis patents U.S. Patent Nos. 6,068,770 and 6,378,907 B1 (collectively, the "patents-in-suit") are invalid. Also, as in the First Action, Pall seeks a declaration that its fluid separation devices--in particular its redesigned devices--do not infringe these patents. These redesigned devices have already been the subject of a discovery dispute in the First Action and are encompassed by the allegations in the Complaint and Counterclaim in the First Action. Indeed, the Court's April 30, 2004 Order enjoins the redesigned devices. As such, the Second Action serves no useful purpose. Instead, it represents an abuse of the purposes of the Declaratory Judgment Act, wastes judicial resources, and is duplicative of the First Action.

In further support of its motion, Mykrolis relies on its Memorandum of Law submitted herewith.

MYKROLIS CORPORATION
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May 7, 2004

Certificate of Conference

Pursuant to Local Rule 7.1, I hereby certify that the parties conferred on the foregoing motion and attempted in good faith to resolve or narrow the issues presented.

Susan G. L. Glovsky
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